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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
10

11 UNITED STATES OF AMERICA,
12 Plaintiff,

13
14 v.

15
16 ANTHONY CARLOS VALENCIA,
17 Defendant.
18
19
20

Case No: 1:20-cr-00048 NONE/SKO

**STIPULATION TO CONTINUE DECEMBER
16, 2020 STATUS CONFERENCE TO
FEBRUARY 3, 2021; ORDER**

Ctrm: 7

Hon. Sheila K. Oberto

21 This case is set for a status conference on December 16, 2020. Dkt. 26. On April 17, 2020, this
22 Court issued General Order 617, which suspended all jury trials in the Eastern District of California
23 scheduled to commence before June 15, 2020, and allowed district judges to continue all criminal
24 matters to a date after June 1. This and previous General Orders were entered to address public health
25 concerns related to COVID-19. On May 13, 2020, this Court issued General Order 618, which
26 superseded General Order 617 and extended the court's "judicial emergency for an additional one-year
27 period and suspending the time limits [in criminal cases] of 18 U.S.C. § 3161(c) until May 2, 2021."
28

1 Although the General Orders address the district-wide health concern, the Supreme Court has
 2 emphasized that the Speedy Trial Act’s end-of-justice provision “counteract[s] substantive
 3 openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case.
 4 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no
 5 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at
 6 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
 7 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally
 8 or in writing”).

9 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
 10 and inexcusable—General Orders 611, 612, 617, and 618 require specific supplementation. Ends-of-
 11 justice continuances are excludable only if “the judge granted such continuance on the basis of his
 12 findings that the ends of justice served by taking such action outweigh the best interest of the public and
 13 the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable
 14 unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that
 15 the ends of justice served by the granting of such continuance outweigh the best interests of the public
 16 and the defendant in a speedy trial.” *Id.*

17 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
 18 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
 19 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
 20 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
 21 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
 22 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*
 23 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the
 24 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a
 25 similar, albeit much more enduring, barrier to the prompt proceedings mandated by the statutory rules.

26 In light of the societal context created by the foregoing, this Court should consider the following
 27 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
 28

justice exception, § 3161(h)(7) (Local Code T4).¹ If continued, this Court should designate a new date for this matter's next status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be "specifically limited in time").

STIPULATION

THE PARTIES HEREBY STIPULATE, through their respective attorneys of record, Assistant United States Attorney Brian W. Enos, counsel for the government, and Peter M. Jones, counsel for defendant Anthony Carlos Valencia ("defendant"), that this action's **Wednesday, December 16, 2020 status conference be continued to Wednesday, February 3, 2021, at 1:00 p.m.** The parties likewise ask the court to endorse this stipulation by way of formal order.

The parties base this stipulation on good cause. Specifically,

1. After the production and review of discovery this past summer, the parties began substantively discussing the parameters of a potential resolution of this case in advance of trial. On this end, counsel for the government prepared and delivered a written plea offer to the defense in October 2020.
2. Defendant is currently in custody within the Lerdo Detention Facilities in Kern County. In light of issues stemming from the current COVID-19 pandemic, Lerdo has imposed quarantine-related and other access-restricting protocols in an effort to stem the spread of the virus. As a result, arranging for in-person meetings with inmates has proven difficult.
3. Prior to substantively responding to the government's plea offer, defense counsel is working to arrange to meet with defendant to discuss its terms and defendant's response to the same. In light of the sensitive nature of the charges in the indictment, defense counsel is working toward arranging for this meeting in as confidential a manner as possible.
4. After meeting with defendant, defense counsel may need to confirm the application of relevant sentencing enhancements by arranging for a review of electronic evidence (1)

¹ The parties note that General Order 612 acknowledges that a district judge may make "additional findings to support the exclusion" at the judge's discretion. General Order 612, ¶ 5 (E.D. Cal. March 18, 2020).

- 1 containing contraband and (2) within the government's possession, pursuant to relevant
2 provisions of the Adam Walsh Act (18 U.S.C. § 3509(m)). On this end, counsel for the
3 government will work with the defense and agents at Homeland Security Investigations'
4 Bakersfield Office to promptly arrange for the review of this evidence as necessary. If the
5 parties are able to agree to the terms of a plea agreement prior to the continued status
6 conference, they will contact the court in an effort to schedule a change of plea hearing.
- 7 5. The parties therefore stipulate that the period of time from December 16, 2020 through
8 February 3, 2021 is deemed excludable pursuant to 18 U.S.C. §§ 3161(h)(7)(A) and
9 3161(h)(7)(B)(i) and (iv) because it results from a continuance granted by the Court at the
10 parties' request on the basis of the Court's finding that the ends of justice served by taking
11 such action outweigh the best interest of the public and the defendant in a speedy trial.
12 Counsel for defendant believes that failure to grant the above-requested continuance would
13 deny him the reasonable time necessary for effective preparation, taking into account the
14 exercise of due diligence.
- 15 6. Nothing in this stipulation and order shall preclude a finding that other provisions of the
16 Speedy Trial Act dictate that additional time periods are excludable from the period within
17 which a trial must commence.

18 IT IS SO STIPULATED.

19 Dated: December 7, 2020

MCGREGOR W. SCOTT
United States Attorney

21 By: /s/ Brian W. Enos
22 Brian W. Enos
23 Assistant United States Attorney

24 *(As authorized 12/8/20)*

25 Dated: December 8, 2020

26 By: /s/ Peter M. Jones
27 Peter M. Jones, Esq.
28 Attorney for Defendant
Anthony Carlos Valencia

ORDER

IT IS ORDERED that the status hearing currently set for December 16, 2020, at 1:00 pm is continued until February 3, 2021, at 1pm.

IT IS FURTHER ORDERED THAT the period of time from December 16, 2020, through February 3, 2021, is deemed excludable pursuant to 18 U.S.C. §§ 3161(h)(7)(A) and 3161(h)(7)(B)(i) and (iv) because it results from a continuance granted by the Court at defendant's request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

IT IS SO ORDERED.

Dated: **December 8, 2020**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE